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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

Forty-fourth session

SUMMARY RECORD OF THE 23rd MEETING (FIRST PART*)

Held at the Palais des Nations, Geneva,
on Wednesday, 19 August 1992, at 3 p.m.

Chairman: Mrs. KSENTINI

later: Mr. CHERNICHENKO
Mr. ALFONSO MARTINEZ

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* The summary record of the second part of the meeting appears as document E/CN.4/Sub.2/1992/SR.23/Add.1.

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THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES (agenda item 10) (continued)

(a) QUESTION OF HUMAN RIGHTS OF PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT (continued)

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INDEPENDENCE AND IMPARTIALITY OF THE JUDICIARY, JURORS AND ASSESSORS AND THE INDEPENDENCE OF LAWYERS (agenda item 11) (continued) (E/CN.4/Sub.2/1992/25 and Add.1; E/CN.4/Sub.2/1992/NGO/11; E/CN.4/Sub.2/1991/30 and Add.1-4)

1. Mr. KIRKYACHARIAN (Movement Against Racism and for Friendship Among Peoples), speaking on agenda item 11, said that more than two years earlier the Syndicat des Avocats de France, the Syndicat de la Magistrature and his organization had submitted a document to the United States Attorney-General concerning a number of activists in the fields of equality, civil rights and the defence of the black or Indian minorities, currently serving sentences in United States prisons. Those prisoners included Leonard Peltier, a leader of the American-Indian movement who was supported by a number of religious, moral and social authorities, Elmer Pratt, alias Geronimo, whose cause had been taken up by Amnesty International, Susan Rosenberg and Judith Clark, who had spent a number of years in prison for insignificant offences, and Mark Curtis. His organization and others had raised the question at the most recent session of the Commission on Human Rights. Surprisingly, that communication had evoked little response from those who might have been expected to contradict it; although one of the persons referred to, Johnny Harris, alias Imani, from Birmingham, Alabama, had now been freed, albeit following a campaign that had lasted some 20 years. It was hard to see how any of those persons posed a threat to United States security.

2. His organization drew attention to a report by Amnesty International published some five years earlier, which had described the treatment meted out to prisoners at the penitentiary in Marion, Illinois, as cruel, inhuman and degrading. In the State of Iowa, Mark Curtis had three times been refused the parole to which he was entitled under the normal criteria. It was to be hoped that parole would be granted on the fourth application, in November 1992, particularly since a federal court had recently sentenced the policemen who had beaten him up at the time of his arrest.

3. The more general problem of the large proportion of prisoners from minorities in the United States prison population also merited attention. Sixty per cent of that population came from minority groups, and 48 per cent were blacks, although Afro-Americans comprised only 12 per cent of the country's population. It was undeniable that a number of those prisoners were criminals. Nevertheless, the State must bear some share of responsibility for the violence, poverty, endemic underemployment and moral degradation, to which it could find no better solution than repression. Social exclusion could not be remedied by measures such as the death penalty.

4. His organization called upon the Sub-Commission to establish a working group on arrests and criminal sentences of members of minorities in the major countries of North America and Europe. It also called upon the Sub-Commission to urge those States to look favourably upon applications by prisoners who claimed that there was a link between their sentence and their activities to promote ethnic minorities. Lastly, the Sub-Commission should find some appropriate means of expressing its concern at the cases referred to in the document to which he had referred, foremost among which was the case of the now-symbolic figure of Leonard Peltier.

5. Mr. MEJIA (World Organization Against Torture), speaking on agenda item 10, said that he wished to draw the Sub-Commission's attention to the increase in the number of persons sentenced as a result of unfair trial proceedings in many countries of the world. In Burundi, for example, a number of persons had recently been sentenced to death or life imprisonment, and another 500, mostly members of the Hutu tribe, were liable to receive similar sentences following the incidents in the latter half of 1991. A similar situation obtained in the Republic of Korea, where hundreds of prisoners of conscience awaited severe sentences on charges of alleged "collaboration with the enemy".

6. In the Sudan, thousands of persons were detained in inhuman conditions, subjected to indescribable torture, and tried in camera by military or security courts. In the Syrian Arab Republic, where about 3,000 prisoners had been released at the end of 1991, hundreds of Syrians, Palestinians, Lebanese and others were still detained for their political or religious beliefs, awaiting trial by security courts. In the Islamic Republic of Iran, hundreds had recently been detained following protests against the regime and the economic situation. Some of those detained were alleged to have been handed down severe sentences, including the death penalty, following secret trials. In Bahrain, too, many members of opposition religious or political groups and their sympathizers had been detained and tortured over the years. Citizens returning to Bahrain after periods of residence abroad had met with similar treatment, and some had subsequently been expelled. About 100 prisoners of conscience detained since the late 1980s were currently staging a hunger-strike in protest against their conditions of detention, and at least 6 were said to have been hospitalized as a result of recent ill-treatment.

7. Torture and secret trials were also common practice in various regions under foreign administration, where pro-independence demonstrations were the cause of systematic and massive detentions. Attention had repeatedly been

drawn to the situation in the occupied Palestinian territories, East Timor and Tibet. While some detainees had been freed, hundreds of others continued to be detained in deplorable conditions.

8. In a number of countries, the interaction between socio-political and religious phenomena had led to acts of violence which, albeit reprehensible, had been met with unjustifiably Draconian measures. The most alarming situations were those in Tunisia, where freedom of organization had been curtailed and the Tunisian Human Rights League dissolved by law; in Morocco, which had a long record of repression, and where many persons were being detained and a number of persons were alleged to have succumbed to torture or to have been summarily executed; and in Algeria, where, following the declaration of a state of emergency in 1991, the authorities had announced their intention of setting up "security camps".

9. His organization was also concerned at developments in the human rights situation and particularly that of prisoners in countries like Egypt, where members of political or religious groups and persons accused of criminal offences were routinely tortured. In Haiti, too, following the coup d'état in September 1991, action by the military and security forces had led to the detention or death of many actual or alleged supporters of the previous regime. In India, which was regarded as one of the great democracies, not only political demonstrations but also demonstrations by various sectors of society and tribal communities against economic and administrative measures had been violently suppressed.

10. In Chad, the war with Libya had been used to justify the detention, torture and execution of thousands of people over the years. Moves towards democratization by the current Government had led to greater freedom of the press and the legalization of political parties and various groups and associations. Nevertheless, human rights violations persisted, as was evidenced by the murder in early 1992 of the Vice-President of the Chadian Human Rights League. Furthermore, although a number of persons had recently been freed after intervention by a European Government, many others continued to be detained in particularly harsh conditions.

11. His organization had also had to intervene on a number of occasions on behalf of persons detained and subjected to serious ill-treatment in Armenia, Azerbaijan - particularly the Nagorno-Karabakh region - Moldova, Georgia, Ukraine and South Ossetia. Many of those detainees were hostages, while others were listed missing or had been found tortured and killed.

12. Aware as it was of the extent and limitations of the Sub-Commission's powers, his organization called upon it, and upon the United Nations system as a whole, to give particular attention to the situations to which he had referred, through a strengthening of the existing mechanisms or through the conducting of fact-finding missions by experts, representatives or special committees, with particular regard to conditions of detention and the conduct of trial proceedings without guarantees of fairness and impartiality.

13. Mr. ANDREU (International League for the Rights and the Liberation of Peoples), speaking on agenda item 11, wished to draw the Sub-Commission's attention to the increasingly prevalent phenomenon of trial by military courts

of members of the security services accused of human rights violations - a phenomenon that totally contradicted the internationally accepted principle of the independence and impartiality of the judiciary. By their structure, the military courts contradicted the axiom that no one could be simultaneously judge and party to a case. The military courts of Colombia were an example of that situation: most of their officials were military or police personnel on active service, subordinate to the judge of the case, who, in his capacity as commanding officer, had the right to appoint and dismiss them. Furthermore, the judges of first instance were senior officers investigating and trying offences committed by their subordinates, often on the orders of the superior himself. The officer who had ordered a citizen's disappearance or murder thus became the judge of his own crime.

14. Military courts were highly dependent on the executive branch, an infringement of the principle of independence of the judiciary. In Venezuela, for example, the President of the Republic was empowered under article 54 of the Code of Military Justice to order the filing or suspension of military court proceedings. On 19 October 1989 that power had been used to suspend the trial of military units accused of opening fire on 4 buses carrying 200 students in an incident in 1985. In February 1990 it had been used to prevent proceedings being taken against a former military judge accused of a series of criminal offences during the investigation into the El Amparo massacre, in which 14 fishermen had been murdered on 29 October 1988.

15. The military courts in Colombia were also subordinate to the executive branch. The court of first instance was presided over by the commanders of the military or police units, while the Higher Military Court was under the authority of the Commander-in-Chief of the Armed Forces (Decree Law 2550/88, arts. 324 to 355).

16. Further evidence of the lack of impartiality and independence was the fact that, even in the few cases where military personnel were given custodial sentences by the military courts for human rights violations, those sentences were not served. For example, the Colombian Minister for Defence had recently acknowledged that Lieutenant-Colonel Víctor Manuel Bernal Castaño, detained on remand for his part in the Fusagasugá massacre in which five peasants had been killed on 18 August 1991, was currently attending a military course in the United States of America.

17. Far from guaranteeing the independence and impartiality of the judiciary, the military courts contributed substantially to impunity, as was confirmed by the Working Group on Disappearances in its report (E/CN.4/1991/20). But military courts also violated other rights set forth in international instruments, such as the right to an effective remedy. In many countries, victims of human rights violations or their families were prohibited, expressly, by precedent, or in the absence of statutory regulation, from being civil parties to military trials. The right of access to the truth and the determination of rights were also infringed. The raison d'être of the special courts was the need to guarantee the principle of the independence and impartiality of the judiciary. Quite the reverse applied in the case of the military courts trying human rights violations, as was pointed out by the Special Rapporteur on torture in paragraph 271 of his report (E/CN.4/1990/17).

18. His organization was convinced that, in order to strengthen the independence and impartiality of the judiciary, an essential prerequisite for the safeguarding and protection of human rights, the powers of the military courts must be restricted to hearing purely military offences, and their power to hear cases involving serious human rights violations must be curtailed. It urged the Sub-Commission to give special attention to that phenomenon, which had contributed significantly to impunity.

19. Ms. BINO ALVES PEREIRA (American Association of Jurists), speaking on agenda item 11, said that the independence of the judiciary in the exercise of its functions was both limited and guaranteed by its duty and prerogative to administer justice in accordance with the law (le Droit) rather than with legislation (la Loi). Sentences must be in accordance with the law, and in particular, with international principles, including that of jus cogens, as defined in article 53 of the Vienna Convention on the Law of Treaties. Recognition of that rule need not be universal: it need only emanate from a sufficiently large and sufficiently representative number of States of the international community. Consequently, where domestic legislation conflicted with a fundamental law, the domestic judge must regard the latter as taking precedence, and rule accordingly. Legislation that conflicted with a rule of international law was merely a further violation of international law, giving rise to international responsibility on the part of the State in question, as had been pointed out by Mr. Jiménez de Aréchaga, former President of the International Court of Justice. International case-law followed the same line of reasoning. There was thus an international obligation to apply the principles generally accepted by the international community.

20. However, that obligation became devoid of legal effect if the domestic judge lacked the independence necessary to comply with it in the context of the domestic legal order. Consequently, one could not but welcome the ruling by the Swiss Federal Court, in the Bufano and Sánchez Reisse case, that the provisions of article 3 of the European Convention on Human Rights took precedence over those of an extradition treaty with Argentina. Similarly, in its 1961 Banco National de Cuba ruling, the District of New York had decided that United States courts were obliged to respect and apply international law not only by virtue of the country's status and quality as a member of the community of nations, but also because international law was an integral part of United States law.

21. The fight to secure universal integration of international rules in domestic legislation must continue. Yet recently the United States Supreme Court, in the Alvarez Machaín case, had recognized the authority of United States governmental organs to order the kidnapping of foreign nationals for trial in the United States on criminal charges. That decision implied the destruction of the basic principles of human rights and a violation of the Charter of the United Nations, since the jurisdiction of domestic courts within the frontiers of each country was a specific manifestation of the principles set forth therein. The ruling also violated article 6 of the United States Constitution, whereby treaties to which the United States was a signatory were deemed to constitute the supreme law of the country, by which the judges of each State were bound. A decision of the Supreme Court that violated both international and domestic law must thus be regarded as null and void.

22. The independence of the judiciary also presupposed guarantees of their security. Yet, since 1971, assumption of the office of magistrate in Italy was often tantamount to a death sentence, while the Italian State had done little to counter the activities of the Mafia. In Peru, 133 magistrates had been removed from office in a purge of the judiciary by the executive branch. Such events were a travesty of the rule of law. Yet it was the national authorities who, under article 11 of the Basic Principles on the Independence of the Judiciary adopted by the General Assembly in 1985, were responsible for ensuring the security of members of the judiciary. Her organization considered that an expert should be appointed to carry out the tasks proposed by Mr. Joinet in the addendum to his report (E/CN.4/Sub.2/1992/25/Add.1). That expert should receive the support of fact-finding missions to countries such as Peru, and indeed Italy, where the most serious violations were reported. The Sub-Commission should also turn its attention to the judgement of the United States Supreme Court in the Alvarez Machaín case. A declaration should be adopted, reaffirming that the principles and standards of international law took precedence over arbitrary rulings, and urging States of the international community unreservedly to respect those norms and principles.

23. Mr. AHMAD (World Muslim Congress), speaking on agenda item 10, said that, even in cases where detention or imprisonment was considered just and in accordance with universally accepted principles, the inherent dignity of a human being must invariably be respected. There could thus be no place for cruel, inhuman or degrading treatment or punishment in any judicial system. Yet in large areas of the world those basic principles were flouted.

24. Where those abuses were perpetrated by State agents, responsibility for them rested squarely with the State. Not infrequently, the higher authorities showed reluctance to take appropriate action against the police or paramilitary staff guilty of those abuses. It had been suggested that such violations were partially attributable to the incompetence of the investigating personnel, who knew of no way of conducting investigations other than through recourse to ill-treatment and torture. Training of investigative staff to familiarize them with modern methods of interrogation, together with provision of courses in human rights law, might be one answer to that problem. The Sub-Commission might wish to consider formulating a recommendation on provision of assistance to States in that regard.

25. There were cases where gross and large-scale human rights violations had been committed on the orders of the Government, or with its connivance or sanction. Such cases frequently involved unlawful detention, torture, gang rape of women and disappearances of detained persons. It was unlikely that such violations would be hidden from the Government concerned and it was probable that the lower-level personnel who actually carried out the violations expected a reward for having zealously carried out their patriotic duty to cleanse the country of unwanted elements.

26. The Sub-Commission might wish to formulate a recommendation with a view to discouraging the occurrence of such violations.

27. Finally, he invited the attention of the Sub-Commission to an area where massive violations of human rights were taking place. In the State of Jammu and Kashmir, the Indian administrative authorities were brutally repressing

the Kashmiris who had asked for the implementation of United Nations resolutions, to which India was a party, guaranteeing their right to self-determination. Arbitrary arrests followed by long imprisonment and sustained torture were routine in the case of arrests made by the police, the paramilitary forces or the army who had been made immune to prosecution by special legislation or ordinances. Death in custody was common and resulted from torture applied to extract confessions. A favourite method of torture was the rape of women at gunpoint in their homes in the presence of the children, husband or other relatives. Other forms of torture involved deep burns and electric shocks. His statements were based on facts documented by independent and reliable investigators.

28. Mr. GUISSE said that an independent judiciary must play an important role in the implementation of the rule of law in States governed by the rule of law. It was only in that framework that the judicial authority could work satisfactorily for society both for those who were accused and for those who carried out the trial. In those circumstances the judge acquired and retained his freedom of discretion and decision which were the fundamental guarantees of respect for the human person and its rights. Any decision in a court worthy of the name must have the law as a framework and be supported by the free conscience of the judge. Unfortunately that aspiration was currently utopian. Instead of seeking to secure what was just and equitable, courts often denied justice.

29. The causes of such a situation were many and varied but fell into two main categories, the political and the economic. The political authorities, seeking allies and support, sometimes used unorthodox means to control the judiciary. In many countries, both developing and developed, the political authority intervened in the appointment and careers of judges so that judges became dependent on the good graces of the central authority. In such circumstances it was difficult for a judge to be independent with the result that the performance of his duties was not dependent on his conscience and the law but rather on what the central authority wanted. He could no longer therefore play an independent role in the society in which he lived and worked. Such a phenomenon was no longer the monopoly of a single group of countries but had become universal. Both the prosecuting authorities and the judiciary were under the control of the central Government; that situation also affected the auxiliary personnel, including the lawyers, jurors and others involved in the dispensation of justice. In some countries judges truly worthy of the name had been assassinated by armed bands associated with extreme ideologies. In that connection he wished to pay a tribute to the memory of colleagues in Italy, Argentina and elsewhere who had performed their noble mission to the point of supreme sacrifice.

30. The independence of the judiciary was also undermined by economic factors. Judges had to confront economic problems throughout their career; they were poorly paid and could be tempted. Corrupt practices existed in every country. On occasion such practices were so widespread that they paralysed the entire judicial system. Even when a judge resisted such pressures, the financial powers could use the weapon of violence through their involvement in scandals and organized crime.

31. On the issue of trial law, a fair trial was difficult to achieve. A fair trial began at the police station and ended only when the offender was finally released; it involved the participation of all elements in the legal process. The defendant had the right to an adequate defence, to a speedy trial and to be informed of the charges against him and to counsel when necessary. Fairness was very difficult to achieve in civil trials because of the high cost of litigation so that the system in fact favoured the rich.

32. In cases of impunity, the principle of civil reparation might encounter difficulties because the jurisdiction called upon to rule on the question of impunity might not be competent to deal with civil reparations which must at least be adequate and proportionate to the harm suffered by the individual or his heirs. In calculating the amount of the reparations account must be taken of lost earnings as well as of the moral, material and professional harm suffered by the victim.

33. Mr. FREDERICK (Service, Peace and Justice in Latin America), speaking on agenda item 10, said that document E/CN.4/Sub.2/1992/NGO/20 had rightly pointed out that impunity was the greatest obstacle in the way of the development of democracy in many countries. Certainty that there would be no punishment for those who had violated human rights and the existence of differing criteria in the application of justice had led to the institutionalization in many countries of a system of human relationships lacking equality and justice. The process of transition to democracy and the peaceful settlement of internal conflicts would be impossible if the issues of punishment for those guilty of such crimes, the exclusion of such persons from holding official positions and the prohibition of policies which encouraged such conduct were not addressed.

34. Latin America was not the only region where impunity was a feature of the process of transition to democracy. Impunity undermined the very foundations of the democratic system not only because it protected those guilty of crimes against humanity but because it led to unjust economic, social and cultural relationships both within the country and in the international system. A main purpose in ensuring the punishment of those who had committed violations of human rights was to maintain the trust of the population in the rule of law as the basis of social relationships.

35. In the political and economic systems of Latin America, the impunity of a small group of individuals, leading in turn to increasingly corrupt institutions, was counterbalanced by the application of heavier punishments meted out to the majority of the population, particularly the poorest sectors. In those countries the law as applied, instead of protecting the rights of the poor, violated them. The consequence was a progressive lack of credibility on the part of the population towards democratic institutions and particularly the system of justice.

36. His organization hoped that Mr. Guissé and Mr. Joinet would give further consideration to the operation of the system of justice, to the issue of serious economic crimes, particularly the appropriation of national wealth by political leaders and to threats to the environment. The issue of the right to reparations for victims of violations of human rights was also of great importance.

37. There were many examples of impunity at the international level which were reflected in the unilateral nature of the so-called new international economic order in which the countries of the third world were increasingly the victims of discrimination. One example was the recent decision of the United States Supreme Court which had authorized the seizure of individuals in other countries in contravention of international law and bilateral treaties.

38. His organization urged the Sub-Commission to authorize a study of impunity by one of the authors of the working paper as the issue was of fundamental importance for the promotion and protection of human rights.

39. Ms. PARKER (International Educational Development), speaking on agenda item 11, said that the report on the independence of the judiciary and the protection of practising lawyers (E/CN.4/Sub.2/1992/25), although welcome, skirted the important question of the incorporation of international standards into domestic law.

40. The question of independence inevitably arose in the context of the protection of human rights and the degree to which international standards, treaty-based and customary, especially those that had acquired jus cogens status, were actually justiciable in domestic courts. Without the possibility of invoking those laws in domestic courts, judges and lawyers could apply only domestic law which in many cases might violate international standards.

41. That point could be illustrated by two examples.

42. First, until recently the laws and constitutional provisions relating to apartheid were the law of the land in South Africa and it was not therefore possible to overturn the system judicially. As a result, the most fundamental human rights issue, the fact that apartheid was a crime against humanity, could never be raised in domestic courts.

43. Second, during the Zia regime in Pakistan, religious persecution had been legalized by making it part of the Constitution by presidential ordinance. Judges invariably argued that they only had jurisdiction over the laws of the land which did not include international standards such as those included in the Universal Declaration of Human Rights.

44. In the United States of America, the Constitution stipulated that treaties were the law of the land and earlier Supreme Court decisions had invoked and applied customary international law in a human rights context. Currently, however, judicial hostility and judicially imposed barriers made actual justiciability a phantom. Part of the ability to control courts lay in the appointment process, which had had a devastating effect on human rights. As a consequence of politically motivated appointments, about 70 per cent of the federal judiciary of the United States, including the Supreme Court, was extremely conservative with a decided aversion to the domestic application of international human rights law. Three recent Supreme Court cases had gone against precedent dating from the very first cases in United States jurisprudence. Those were the Californian Indians case of 1988 in which the Supreme Court had refused claims of freedom of religion and other international standards and had allowed logging roads to be built through the last remaining sacred lands of the Californian Indians. In the case of

Stanford v. Kentucky, the Supreme Court had approved the execution of mentally retarded minors in defiance of an earlier ruling against the United States by the Organization of American States which had declared such executions to be a violation of jus cogens. In the Alvarez case the Supreme Court had upheld kidnapping from a foreign country. A similar situation existed in administrative courts which handled "first instance" refugee claims.

45. In China, the practice of "verdict first, trial second" had been aggravated by the practice of political party intervention in the judicial process. A further feature of China's system involved the absence of tenure for judges; judges could be appointed and removed at will by the People's Congress or at the local political level. As the Chinese trial system only involved mitigation and sentence rather than guilt, the role of the lawyer was trivial. International instruments setting out the rights and duties of lawyers had no meaning in the Chinese context.

46. International Educational Development therefore urged the Sub-Commission to request the Rapporteur to seek to obtain further information from the Chinese Government and to prepare a separate report on China under agenda item 11 to be presented to the Sub-Commission at its next session.

47. Mrs. FERRIOL, speaking first on agenda item 10, regretted that so far few Governments had commented on the report by Mrs. Bautista on detained juveniles (E/CN.4/Sub.2/1992/21). The issue was a very important one at a time of rising violence in society and there was an increasing need for minimum rules concerning justice for juveniles, including detained juveniles. The legal process concerning juveniles had been strengthened by the Convention on the Rights of the Child. Youth constituted an important social sector which represented the future of the world. Young persons needed special treatment on the part of the authorities by means of national legislation to ensure the implementation in national law of the various international instruments and also through the provision of training for the legal and police personnel connected with the administration of justice.

48. In the contemporary complex world young people, particularly children, were constantly exposed to violence, war and social marginalization as well as to the influence of organized crime which attempted to inveigle them into drug addiction and the formation of gangs organized for criminal purposes. In her own country, violence was a consequence of the drug traffic and State policies had moved towards the provision of support for young people who were being tempted by organized crime to participate in criminal activities which were presented to them as a solution to their problems. The results had been a loss of values and a deterioration of family structures. The authorities had reached the conclusion that specialized institutions must be set up for the rehabilitation of youth and to deal with the problem of juvenile offenders, bearing in mind the social and family context surrounding such cases.

49. Similar action must be pursued by the international community. The Special Rapporteur's study should be continued and Governments should be urged to provide more information. The seminars to be organized pursuant to Sub-Commission resolution 1991/6 could also make an important contribution.

50. Turning to agenda item 10 (b), she noted that in the report of the Special Rapporteur on the question of human rights and states of emergency (E/CN.4/Sub.2/1992/23) the list of States which had proclaimed, extended or terminated a state of emergency was not only descriptive; a dialogue had taken place with many countries. An emergency communication system had also been established between Governments and the Special Rapporteur on the evolution and modalities of the state of exception; that was the type of cooperative attitude that must prevail between the Member States of the United Nations and the Organization itself. The excerpts from the document of the Conference on Security and Cooperation in Europe, contained in annex I, were also very useful. All the above-mentioned components could serve as draft guidelines for national legislation.

51. She referred to the main criteria for proclaiming a state of exception: it must be fully justified by a serious disturbance; the legislative organs must continue to function; it must be declared for a specific length of time; a constitutional control must exist over the decrees promulgated and the measures taken during the state of emergency; responsibilities must be made clear for any abuses committed by the Government during the state of exception; and human rights and fundamental freedoms must not be suspended.

52. Concerning the report submitted by Mr. Chernichenko and Mr. Treat on the right to a fair trial (E/CN.4/Sub.2/1992/24 and Add.1-3), she considered their comparative study to be particularly useful. She wished to make several comments on addenda 2 and 3, because they focused to a large extent on the inter-American system. That system, based on the principles of the American Declaration on the Rights and Duties of Man and the American Convention on Human Rights, had two main bodies: the Inter-American Commission and the Inter-American Court of Human Rights. The latter, both consultative and jurisdictional in nature, gave the regional system a unique character in the international system of human rights protection. Its decisions, binding for those States that had accepted its competence (currently 13), were implemented before national courts using a special domestic mechanism. The inter-American system had been gaining in credibility in the international community; it would be useful for the United Nations system to study and codify the inter-American doctrine with regard to the right to a fair trial.

53. In addendum 3 to the report, the Special Rapporteurs focused on the procedure of amparo as used in Latin American law. They noted that in Mexico, for example, the writ of amparo extended to the whole constitutional, statutory and administrative legal order. The report also pointed out that in some cases habeas corpus had the function of independent recourse. She reported on how the new Constitution of her own country, Colombia, provided mechanisms to enable citizens to ensure that their human rights were not violated. The Constitution of Colombia enshrined the right of habeas corpus, which could be invoked by anyone who considered that his rights had been violated. It also provided for a new mechanism, called acción de tutela, which provided that a person could demand before the courts, in a preferential and simple procedure, that he be given immediate protection for his basic rights when those rights were endangered or threatened by any public authority. The rights which were protected were consistent with those contained in the international human rights instruments ratified by Colombia. The procedure did not apply when it was possible to invoke habeas corpus.

54. Turning to agenda item 11, she considered that the study prepared by Mr. Joinet on the independence of the judiciary and the protection of practising lawyers (E/CN.4/Sub.2/1992/25) provided an excellent and well-balanced analysis of the information provided by Governments and other sources. Addendum 1 to that document offered useful alternatives for directing future work. The study enumerated those components of the institutional structure of the judiciary that were needed to ensure its independence. It also addressed the need to protect officials in the judicial branch, and in that context it was important that information continued to be provided on situations that affected the independence of the judiciary. The studies constituted a major contribution to the creation of international standards in that area.

55. Mr. BOUTKEVITCH said that he would speak solely on agenda item 10 (b), the question of human rights and states of emergency. Exactly one year earlier, on 19 August 1991, an attempt had been made to overthrow the Government of the former USSR and to proclaim a state of emergency. That event had also concerned Ukraine, but no state of emergency had been proclaimed there, thanks to the courage of the Parliament and the Cabinet of Ministers of that Republic. Ranking generals had put intense pressure on the highest legislative and executive organs of Ukraine, demanding that the Government should immediately proclaim a state of emergency. The reasons given had been ludicrously primitive: the need to bring in the harvest; the need to prepare for winter; the need to revive severed economic ties, etc. To that end, they had been prepared to prohibit free speech, close newspapers and place citizens in internment camps.

56. Happily, they had not prevailed, but the lesson drawn had been that Ukraine must do everything possible to prevent a repetition of such events.

57. An important step in that direction had been the adoption of the act on states of emergency, one of the first laws adopted by independent Ukraine. Comprising 44 articles, the act provided thorough and comprehensive rules governing states of emergency and relevant questions on human rights and fundamental freedoms. It defined the conditions for proclaiming a state of emergency, the roles of the executive and legislative organs, judges, prosecutors and regional authorities, what measures could be taken and the rights of citizens and legal entities. The list of situations in which a state of emergency could be declared, and which he regarded as being too long, included: environmental disasters, which should not raise objections in the light of the Chernobyl events; massive violations of the legal order accompanied by violations of human rights and fundamental freedoms; the blocking off or seizing of major objects or areas in the country; attempts to seize Government power or the constitutional system; an attack upon the territorial integrity of the country; and the need to restore the constitutional system. A state of emergency could only be declared by the Parliament, or by the President of Ukraine if the Parliament approved. But before declaring a state of emergency the President and Parliament must call upon those persons whose actions were about to lead to such a declaration to cease their illegal activities. Except for the case of environmental disasters, a state of emergency could not be declared immediately. Once declared, an explanation must be given on the conditions that had led to the

declaration, why it had been necessary, which rights would be suspended, which governmental bodies would be responsible for carrying it out and what its scope and duration would be. By law, a state of emergency could not last more than 30 days. There were only five rights that could be suspended, and nine others in particularly serious situations. In general, they were not basic human rights. All other human rights and fundamental freedoms listed in the International Covenants on Human Rights could not be restricted during a state of emergency. Moreover, the death penalty, which unfortunately was allowed under Ukrainian legislation, could not be imposed during the state of emergency or for a month thereafter.

58. In closing, he suggested that future reports of the Sub-Commission on states of emergency should not only provide a list of those countries in which a state of emergency had been declared but also analyse what had happened in respect of human rights in those countries, whether they had been restored and to what extent.

59. The CHAIRMAN, speaking as a member of the Sub-Commission, said that he remembered very well that during the events that had taken place in Moscow a year earlier he had had contacts with the members of the Sub-Commission, and particularly cordial contacts with Mr. Despouy, in an effort to produce an appropriate response to those events.

60. Mrs. PALLEY said that although she believed that it was difficult to be objective about one's own country, she felt compelled to raise the issue of human rights violations that her country had committed or was about to commit. Turning first to a matter of grave concern that had first been addressed in a working paper on privatization of prisons prepared by Mr. Alfonso Martínez (E/CN.4/Sub.2/1991/56), she said that the United Kingdom was pressing ahead with prison privatization. At the beginning of July 1992, according to The Independent newspaper, the United Kingdom was already considering the privatization of as many as 12 major prisons, or some 20 per cent of the present prison population. She had requested confirmation of that report from the Government of the United Kingdom and had been provided with a written reply, the contents of which she read out to the members of the Sub-Commission. That reply revealed that after an extremely short experiment, three major prisons were to be privatized.

61. In her view, the Government of the United Kingdom was not merely wishing to save money. It was seeking to achieve some kind of prison reform and to secure better prison conditions. It was also trying to find a way around the obstructive attitudes of the trade union of prison officers. None the less, only the State itself had the right, power and duty to deprive persons of their liberty, to hold them in custody, to search them, to censor or inspect their correspondence, to control their visits, to limit their freedom of association and to restrict their family life and privacy. Certainly, only the State could have powers of prison discipline. She was gravely concerned in an attempt to improve prison conditions in the United Kingdom, an excellent end in itself, the means used were contaminating that end in a way that violated human rights. The concept of "deprivation of liberty" could not be privatized. The selling of shares in "prison-security companies" and the inherent danger of corrupt and criminal shareholders were not conducive to ensuring the human rights of persons in prison.

62. The second matter that she wished to address was the tragic conflict in Northern Ireland, which for 20 years had caused deep concern about human rights violations. At the current session of the Sub-Commission, an important written statement had been submitted by the International Federation of Human Rights (IFHR) (E/CN.4/Sub.2/1992/NGO/11) dealing particularly with the questioning of suspects and the intimidation of defence lawyers in Northern Ireland. It grieved her to confirm that, while in disagreement with parts of IFHR's submission, its concerns about the intimidation of lawyers appeared to be wholly justified. Similarly, some of its criticism about police questioning procedures required prompt remedial action by the United Kingdom Government.

63. It was always easy to look with hindsight at events and to criticize acts by those in authority, so she did not assume the justifiability of all demands for the utmost in safeguards for pre-trial procedures when interrogating persons who had acted as violent terrorists during a state of emergency. It was the state of emergency which justified departures from the normal standards, which should be as high as possible. What was quite improper in Northern Ireland was that there had been a continuous state of emergency since August 1969, but successive British Governments had not been prepared to admit it and to make a general derogation from the International Covenant on Civil and Political Rights or the European Convention on Human Rights. Following a judgement by the European Court of Human Rights, the United Kingdom had merely made a minuscule derogation by extending from four days to seven the amount of time that authorities could hold suspects for interrogation. She did not think that it was going too far to say that to justify the measures taken on the international stage by reference to terrorist behaviour in Northern Ireland and not to declare that there was a state of emergency and not to derogate properly was hypocritical. It was unfortunate to have to dwell on such controversial matters as police attitudes in Northern Ireland and the continuing violent emergency there when, for the first time since 1922, Northern Ireland Unionists and the Government of Ireland had had negotiations about renouncing the claim to legal sovereignty over Northern Ireland that had been in the Constitution of Ireland since 1937.

64. She agreed with much in the submission by IFHR. It was, indeed, high time for the Government of the United Kingdom to provide for video and audio recordings of interrogations of suspects. It was essential to suspend forthwith discriminatory searches of lawyers, except when there were reasonable grounds for suspecting the need of doing so. The issuing of threats and abuse to their clients about lawyers appeared to be a police practice, and needed to be made a disciplinary offence. An independent system, without involvement of other police, to investigate complaints against the police was long overdue. She also agreed with IFHR on the general need to ensure rapid access to lawyers but disagreed about the presence of lawyers during interrogation procedures as she had reservations about the special circumstances in Northern Ireland. It was essential to conduct interrogations in order to discover the sources of disorder; she suggested that a client's lawyer could be present behind an obscure screen and should be able to object to a particular line of questioning and to record the proceedings. Another suggestion she wished to make was to have proper research on what was taking place during interrogation practices. The United Kingdom invariably replied to allegations by saying that proof was lacking. That problem could be

resolved by monitoring interrogations and proper research. Last, there was a need for an independent investigation into the death of Mr. Finucane, a defence lawyer who had been murdered following a statement made in Parliament by a junior minister to the effect that certain lawyers in Northern Ireland were not conducting themselves properly, particularly since a United Kingdom double agent for military intelligence had declared that his superiors had known that Mr. Finucane had been targeted. Suspicions of official collusion in Mr. Finucane's murder must be put at rest.

65. She disagreed with the statement of IFHR on the scope of the so-called right to silence. In her view, it was proper to draw inferences from conduct, and silence was a form of conduct. If it was reasonable to expect and to give an explanation, the fact that an accused person remained silent was something that the judge might comment upon when summing up. To allow no comment would certainly lead to guilty persons being acquitted.

66. Mr. EIDE drew attention to two errors in the summary of his statement on page 6 of press release No. 3137. He had spoken of the territorial integrity of Azerbaijan, Armenia and Georgia in the conflict in Nagorno-Karabakh, but the press release had only referred to the territorial integrity of Georgia; the press release had said that 500,000 Armenians had been displaced, whereas actually that figure had included not only Armenians, but also Azeris. Perhaps those two important points could be clarified in a later press release.

67. Mrs. Palley's decision to raise problems in her own country had been a wise one. He noted that Amnesty International had drawn attention to allegations of police brutality in a particular police station in Norway, and the Norwegian authorities had been examining those allegations closely. In fact, there had been a number of prosecutions, but in most cases, the juries had acquitted the alleged offenders. That indicated a tendency on the part of juries to believe the police, and it might be worth looking into that problem in further studies on impunity, in connection with the weighing of evidence.

68. Turning to the more general issues covered under agenda items 10 and 11, he said that the studies and reports presented under those items had shown that the Sub-Commission was making substantial progress in consolidating and clarifying the ground rules of world civilization.

69. One of the problems noted the previous week during the examination of situations that revealed gross human rights violations had been the evasive approach taken by some Governments, particularly when dealing with political opponents in situations of internal disturbances and tension. It had been observed that the origin of such disturbances and tensions could sometimes be found in the policies and practices of Governments, in the irresponsible behaviour of members of opposition groups or in group conflicts where all sides were to blame. It had further been noted that acts of terror could be committed by agents of the Government, by opposition groups or both, and they sometimes fed upon each other, both sides justifying their violations of minimum humanitarian standards by referring to the violations committed by the other side. But terror by one side could never justify terror by the other, and violations of the right to life and the use of torture, maltreatment and enforced disappearances were unacceptable, regardless of what the opposing side had done.

70. It was essential to be able to identify which violations had been committed by whom. He had found particularly useful the approach adopted by the Andean Commission of Jurists, who had sought to identify the authors of major violations, whether they stemmed from agents of the Government, violent opposition groups, drug cartels or others. That made it possible to compare terrorism carried out by opposition groups with that carried out by Governments; the latter sometimes inflated their allegations of terrorism being committed by opposition groups to distract attention from brutal acts carried out by government agents. In many cases, what was involved were simply crimes of homicide perpetrated by members of security forces or persons under their protection; clearly those acts constituted flagrant violations of the rule of law.

71. Such violations were likely to occur when a Government did not have the support of its own people or when a State had occupied another territory, as was the situation in East Timor or in the occupied Palestinian territory.

72. Many Governments that in the past had been greatly affected by such violence were currently seeking to come to grips with the problem by introducing basic principles of the rule of law, in particular by disciplining, retraining and redirecting their own security forces towards the task of protecting democracy and pluralism and by weeding out those who had committed serious crimes and bringing them to justice in a fair trial. That was a particularly difficult task, especially when there was a violent opposition to the Government. In many situations, members of security forces had refused to accept the ground rules, even when the Government sought to assert them. To facilitate their violations, they demanded and, in many cases, obtained the adoption of so-called anti-terrorist legislation, which left a wide scope of impunity for their abuses. That further escalated the violence of the other side and was not conducive to building confidence and respect for ethnic and cultural identity and to joint efforts to create a society for the benefit of all.

73. Mr. Despouy's report (E/CN.4/Sub.2/1992/23) helped to bridge a glaring gap in the system of human rights protection. For many Governments, the use of states of siege or emergency had become a way to escape accountability altogether; tremendous violations of human rights were carried out under that escape clause. However, states of emergency were not intended to be used in that way.

74. First, the declaration of a state of emergency was justified only by the most exceptional and grave circumstances consistent with the State's international obligations. It might not be used to subvert the democratic constitutional order nor aim at the destruction of internationally recognized human rights and fundamental freedoms. States of emergency were sometimes resorted to in order to facilitate the maintenance of an illegal occupation or military presence by referring to those who opposed that presence as "terrorists" or "agitators". That was not legitimate.

75. Second, because a state of emergency could be used only in order to maintain the constitutional order, it had to be carried out in certain ways which were themselves in conformity with that order. A state of emergency

might be proclaimed only by a constitutionally lawful body duly empowered to do so. In cases where the decision to impose a state of emergency might be lawfully taken by the executive authorities, that decision should be subject to approval in the shortest possible time by the legislature, itself the outcome of free and fair elections. That was indeed a requirement in the case of India. He hoped that in subsequent reports Mr. Despouy would inform the Sub-Commission about the provisions on competent bodies and necessary procedures in other countries as well.

76. Third, there were certain very important non-derogable rights, although in several cases those rights continued to be violated by government agents; and even in relation to rights which could be derogated from, significant limitations existed, as indicated in the report.

77. The analysis of the problem of impunity presented in the working paper by Mr. Guissé and Mr. Joinet (E/CN.4/Sub.2/1992/18) pointed out the weak spots which were currently undermining efforts to move towards a world civilization based on the rule of law. In its decision on the situation in the former Yugoslavia, the Sub-Commission had stressed that everyone involved in committing crimes must be held personally accountable. That principle must generally apply to serious human rights violations everywhere in the world. The phenomenon of impunity was the most serious cause of the continuation of violations and must therefore be eliminated.

78. The analysis of the legal mechanisms and practices which contributed to impunity was particularly impressive. Many of the mechanisms covered by the eight major categories identified in paragraph 10 of the working paper had been used by several of the authorities with regard to which non-governmental organizations had provided information during the past few days. Equally important was the effort to outline the steps to be taken to combat impunity.

79. The third report prepared by Mr. Chernichenko and Mr. Treat on the right to a fair trial (E/CN.4/Sub.2/1992/24 and Add.1-3) provided a conceptual analysis and a review of standards and practices at the international level. He endorsed the recommendations contained in paragraph 40 of document E/CN.4/Sub.2/1992/24 on the need to strengthen the protection of fair trial and the right to an effective remedy against arbitrary or prolonged pre-trial detention. He also looked forward to seeing, in the next progress report, an analysis of national practices based on information provided by both Governments and NGOs. The analysis should cover not only legislation but also practice, which often fell short of what was required under legislation. The Sub-Commission should endorse the Working Group on Detention's views on habeas corpus and amparo as a non-derogable right.

80. The course adopted by Mr. Joinet in his report on the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers (E/CN.4/Sub.2/1992/25) represented a step forward in combating acts of subversion against the rule of law. The main division between measures which strengthened and those which weakened safeguards and independence and the subdivision of the measures which weakened the safeguards into five different sub-categories made it possible to monitor, much more precisely, the acts carried out by various elements within Governments, including recalcitrant security forces and persons acting under their protection.

81. Mrs. Bautista's report on the protection of the human rights of United Nations staff members, experts and their families (E/CN.4/Sub.2/1992/19) should be taken very seriously indeed, since United Nations staff and experts were sometimes the deliberate targets of ethno-nationalistic, chauvinistic or ideologically narrow-minded groups that placed the interests of their particular group above the universal commitment to peace, human rights and development. The international community should react as strongly against such phenomena as national societies reacted to violence and intimidation against public officials. Consequently, sanctions should be strengthened against Governments which condoned or even actively supported such actions against United Nations officials, staff members, experts and their families.

82. The analyses provided in the studies and reports before the Sub-Commission achieved a twofold effect: first, they vastly facilitated the worldwide monitoring of human rights performance, and second they made it possible for well-intentioned Governments to take the appropriate steps to prevent future violations. They would also be of great significance for NGOs, which would be able to report on human rights violations even more objectively and systematically than before, as well as for special and thematic rapporteurs in structuring their reports and for Governments in responding constructively to the allegations made and in their endeavours to move forward to stable, democratic societies based on the rule of law.

83. As far as constructive responses were concerned, he had listened with great attention both to the submissions made by NGOs and to the responses by government observers. In both cases the quality had varied considerably, but over the years more and more Governments had taken a constructive approach, recognizing that problems existed and explaining the steps that were being taken to eliminate them. Several Governments had started to cooperate with international humanitarian organizations and with the Centre for Human Rights. He hoped that the tendency would increase and that it would become a matter of course for Governments to apply to the United Nations for advisory services and technical assistance and to report back to the United Nations on the progress made.

84. He had been frankly appalled by the response of the observer for Indonesia. What had happened in some places currently under Indonesian control, in particular East Timor, served as classic examples of the operation of impunity together with the absence of fair trial and other basic rules of law. The killings went far beyond what could be justified under the state of emergency and appeared in many cases to be straightforward homicide. The Government's response had been to criticize those who had presented the information rather than to provide a credible and confidence-inspiring reply. An effort had been made to evoke the past colonial history of Portugal in order to undermine the credibility of the present Portuguese Government. That was meaningless. In some years to come, there would, it was hoped, be a new, democratic Government in South Africa. Nobody would hold that new South African Government morally responsible for the policies which had in the past been pursued by the apartheid regime. The present Portuguese political system had emerged as a consequence of a popular upheaval against the colonial and authoritarian policies of the previous Portuguese regime. It would be

utterly cynical to claim that a Government which had emerged from an anti-colonial revolt should be held morally responsible for the policies pursued by the regime which had been overthrown. He hoped that in future more credible arguments would be found to deal with the human rights situation in East Timor and other places. The situation in East Timor was one of the most serious human rights problems currently existing, and the main responsibility lay with the Indonesian Government and, in particular, its security forces.

85. Ms. GONZALEZ (Latin American Federation of Associations of Relatives of Disappeared Detainees) said that one of the main obstacles to the elimination of the human rights violations which her organization (FEDEFAM) sought to bring about lay with the judicial systems of the States where detainees disappeared. In a number of countries of Latin America and elsewhere the judicial system itself was an accomplice, leading to an impunity which had very harmful consequences. The incapacity of the State, through ineptitude or negligence, by act or omission, to restore the rights that had been violated or to compensate their loss amounted to a lack of justice. The most important factor leading to impunity was the existence of special codes of law for official bodies, especially for the military. Under the military code of law servicemen were tried by their peers in circumstances in which "esprit de corps" prevented impartiality and "due obedience" could be invoked to secure protection.

86. Further contributors to impunity were the general amnesties and pardons granted in Chile, Argentina and Uruguay, which protected those responsible for the most serious violations of human rights. Those mechanisms entailed the prescription of the imprescriptible and the pardoning of acts of barbarism that could never be erased from the memory of the peoples concerned. FEDEFAM urged the Sub-Commission to adopt the necessary measures to eradicate the harmful phenomenon of impunity.

87. Many States were resorting to "states of emergency" under which guarantees provided for in constitutions and international instruments were contravened, leading to massive violations of human rights. In criminal proceedings, universally recognized guarantees such as the presumption of innocence, due process and publicity were violated for no constructive purpose.

88. Some countries such as Colombia resorted to the conversion of temporary legislation into permanent law and had gone so far as to establish "faceless justice". The judge was known only by a number, as was the prosecutor; the witnesses were hidden and the evidence was secret. When the State concealed itself in order to exercise sovereignty, it was no longer possible to speak of the administration of justice or of democracy. Not even the need to protect judges, public servants and witnesses justified such a practice, which inevitably led to demoralization, a lack of credibility, and a generalized practice of "private justice". The Sub-Commission's attention was drawn to that situation and to the lack of independence of the judiciary in some countries such as Peru. It should take urgent action under agenda items 10 and 11 against States which disregarded the recognized legal standards.

89. Mr. Alfonso Martínez took the Chair.

90. Ms. de VLAMINC (World University Service) recalled that the NGO Coalition Against Impunity, of which World University Service (WUS) was a founder member, had submitted statements under agenda item 10 for the past four years in order to raise consciousness of the issue of the impunity granted to human rights violators. WUS had been very pleased with the Sub-Commission's decision to appoint Mr. Joinet and Mr. Guissé to carry out a study of the subject.

91. The theoretical dimensions of impunity were several. Structural impunity entailed mechanisms and structures, institutionalized and legalized in the State, that served to protect those who abused State power - for example, a judicial system of military courts. Strategic impunity entailed active measures taken by State officials, whether through laws, decrees, amnesties or pardons, to derail demands for truth and justice. Strategic impunity also included situations in which there was complicity between the civilian regime and the security forces, where civilian leaders publicly defended repressive measures or military forces that carried them out, repeated and legitimized army disinformation or attacked human rights advocates or those who demanded accountability. Political and psychological impunity was another dimension resulting from State terror, under which political options were restricted and controlled through the State's manipulation of citizens' fears in an attempt to maintain the status quo.

92. WUS had been encouraged by the news that strategic impunity in the southern cone of South America was being challenged at a significant level. The Inter-American Commission on Human Rights had recently affirmed that the amnesties approved by the Governments of Argentina and Uruguay to prevent the prosecution of those responsible for serious violations of human rights or to pardon the very few already convicted were contrary to the Inter-American Convention on Human Rights.

93. In Guatemala, however, the system allowed total impunity: no information, no investigation, no prosecution, and no punishment. Such impunity guaranteed that terror spread among the population and that the repressive system remained intact. The fact that all those responsible for the operation of that system were above the law, unknown and untouchable, generated a sense of helplessness and impotence and a situation of lawlessness. The repressive apparatus continued to operate. Agents of repression had unrestricted access to buildings, roads and properties, with guarantees that no authority would interfere with their actions. Abductions, extrajudicial executions or assassinations might occur at any time. Notwithstanding the recommendation made by the Working Group on Enforced or Involuntary Disappearances that military tribunals should be reserved exclusively for those members of the security forces who committed military offences, a category from which such serious human rights violations as enforced disappearances must be clearly and explicitly excluded, all offences committed by members of the armed forces were judged in military tribunals and were very seldom punished.

94. There were, however, some very encouraging signals coming from Central America and South Africa regarding the struggle against impunity. In their peace negotiations both the FMLN in El Salvador and the URNG in Guatemala had rejected the idea of granting impunity to persons responsible

for serious violations of human rights. The peace accords reached in late December 1991 and early January 1992 by the Government of El Salvador and the FMLN contained positive provisions for the protection of human rights. In a similar way, the African National Congress had rejected a blanket amnesty for government security forces.

95. Impunity had even entered the United Nations system. It was difficult to understand why certain situations were never scrutinized by the Commission on Human Rights and why others were improperly scrutinized, as had been the case with Guatemala for the past six years. Such a situation might be called "impunity for political reasons". Even at the level of the Sub-Commission it was surprising to learn that the Guatemalan Government had requested experts not to approve a resolution on the human rights situation in that country. The agreements reached between the Government of Guatemala and the URNG should not be used as an excuse not to monitor the human rights situation.

96. Mr. van VALT (Pax Christi International) recalled that his organization had drawn attention, under agenda item 14, to the potentially dangerous situation in Abkhazia, where tensions were rising and fighting could break out unless the international community, in particular the Sub-Commission, took some action to persuade the parties, especially the Georgian authorities, to enter into negotiations. Virtually no interest had been shown in the situation. However, in the past few days some 200 people had been killed by Georgian forces and the conflict had reached the front pages of newspapers. Now Abkhazia had been placed under a state of emergency. Unless something was done immediately, the conflict would involve the entire region. Already Chechen armies and armies of other northern Caucasus republics were prepared to defend their Abkhaz brothers and sisters. The chances were that Russian troops would also become involved.

97. How many people did it take to get killed and how much press attention in the West was needed before the international community reacted? It was said that it was virtually impossible to bring an end to fighting such as that taking place in Yugoslavia because it was too late. But surely an effort could be made to prevent the fighting from spreading, for example, to Kosovo, Sanjak or Macedonia? For years the people of Kosovo had been warning the United Nations of Serbia's intentions and had appealed for diplomatic and moral support for the protection of their rights.

98. In East Timor it had also been necessary for demonstrators to be killed before any serious attention had been paid. Did more violence have to occur before bodies such as the Sub-Commission spoke out? In Acheh and West Papua fighting was going on without film cameras, and in the South Moluccas resistance was passive. Were those the criteria for non-action?

99. Uygurs in East Turkestan and Mongols in Inner Mongolia were being detained, tortured and imprisoned by the Chinese authorities for their struggle for freedom from alien oppression. In Tibet the struggle was still a non-violent one, though the response was very violent.

100. Another alarming situation was that of Turkish Kurdistan. For 15 years the Kurdish provinces in Turkey had effectively been under a state of emergency in which rights were restricted and the prerogatives of the

executive branch were enlarged to the detriment of the authority of the legislative and judicial branches of Government. Emergency provisions, moreover, enabled the executive to act arbitrarily in the Kurdish regions. Unlawful detentions, torture, summary executions and involuntary disappearances were frequently related to the exceptional powers granted to the security forces.

101. In Egypt, the continuing state of emergency over the past 11 years had led to arbitrary arrests and the use of torture, according to various human rights organizations, including Amnesty International and Middle East Watch. Torture was not limited to political opponents but was also used against non-political detainees in police stations. While strongly condemning the violence practised by extremist Islamic groups, Pax Christi believed that the use of torture and other conduct in violation of human rights did not promote a solution to problems but rather increased counter-violence and jeopardized the practice of democracy.

102. Finally, Pax Christi wished to reiterate its concern about the violation of the human rights of detainees in prisons and labour camps in China. The Chinese Government's report on conditions in Chinese prisons, released on 11 August 1992, could hardly be taken seriously. All the evidence presented by former prison inmates and human rights organizations showed that conditions were deplorable: prisoners were tortured, forced to do work that was extremely hazardous to their health, and kept in crowded and unhygienic conditions. Political prisoners were kept with criminals, and many of them had not had a fair trial. It was time for the Sub-Commission to deal with that issue and to send a clear message to China that it could not remain exempt from international scrutiny.

103. In those and other situations, the international community could help to reduce sytematic violations of human rights and to prevent bloody conflicts. However, it could be most effective if it acted before it was too late. The least the Sub-Commission could do at its present session was to express concern about the situation in Abkhazia, Kosovo, East Timor and China. Otherwise the message received by the Governments responsible, using emergency or other special powers, would be that they could get away with a tremendous amount before attracting the attention of the international community, and the message received by the peoples struggling for their rights would be that only the voice of violence was heard.

104. Mr. GUMBA (International Federation for the Protection of Ethnic and Other Minorities) said that recent events in Abkhazia showed that a dangerous phase of confrontation was beginning in the Caucasus, which, if it went out of control, could spread to large areas and involve many States. The first act was taking place in Abkhazia; the next victims would be the Chechens. The campaign of slander and disinformation accompanying the present events in Abkhazia could not conceal the fact that the Abkhazian people was bravely resisting the unprovoked aggression against it and that its resistance could only win the sympathy of related peoples in the northern Caucasus and of the entire international community.

105. The logical outcome of the removal from power of the lawfully elected Government and Parliament of Georgia had been an attempt to overthrow the lawful authorities in Abkhazia as a prelude to attacking the liberation movements of the peoples of the entire northern Caucasus on the pretext of "restoring order". The peoples of Russia and the whole international community must realize that failure to react to the gross violations of human rights and international law would turn the Caucasus into a hotbed of destabilization with unforeseeable consequences. The situation was made more dangerous by the presence, in the region, of many uncontrollable armed groups capable of extending their power over substantial territories and of undermining the stability of States.

106. The peoples of the Caucasus wanted peace and democracy, but peace and democracy were in danger there. The international community must not remain inactive and must take the necessary urgent measures to restrain military aggression and to prevent further genocide against the peoples of Abkhazia, the Chechens and the people of northern Caucasus.

107. Mr. PATTEN (National Aboriginal and Island Legal Services Secretariat) informed the Sub-Commission that in New South Wales recently introduced legislation removed from judges their discretion to impose lighter sentences or to give a fixed sentence with a parole period. Sentenced prisoners and prisoners on remand were still being held in police cells for periods of one month or longer. They had no fresh air, no showers, no change of clothes and frequently no opportunity to instruct defence counsel in private, away from other prisoners with whom they shared the cell. People were being held for up to three months because the jails were at present full. Cells built to contain one or two people housed three or four.

108. In a disciplinary measure taken in 1991, the New South Wales Government had withdrawn all privileges from prisoners in certain jails, who had been denied visiting rights, reading materials and other necessities. That continued with every incident in the industrial action taken by the corrective services officers. In the event of a strike by those officers, prisoners would remain locked in their cells for the duration of the strike and be denied exercise, hot food and other amenities. The Commissioner for Human Rights had been denied access to all New South Wales jails when he had tried to inspect them and to hear first-hand evidence from prisoners. The reason adduced had been that New South Wales prisons were a responsibility of the State of New South Wales and that consequently United Nations instruments on human rights did not apply there. So, once again, under the doctrine of cooperative federalism in Australia, the human rights instruments on minimum standards were not enforceable.

109. A good example was what had happened in Western Australia. The Minister for Aboriginal and Island Affairs had recognized that the proposed legislation on juvenile crime penalties breached the provisions of the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child, as well as being contrary to the recommendations of the Royal Commission on Aboriginal Deaths in Custody. Nevertheless, the Government of Western Australia had not retreated publicly. The proposed legislation spelt disaster for aboriginal youth in Western Australia.

110. In 1990 his organization had completed a nationwide survey of prison conditions as faced by aboriginal prisoners. It had found that they were frequently held in poorly ventilated and cramped dormitories, with adults and children being detained together, and with convicted and remanded prisoners also being held together. No consideration was given to prisoners' tribal backgrounds. Food and sanitation were inadequate, and prisoners were subject to much arbitrary discipline. The inquiries made by the Royal Commission had led to no changes in those conditions. At Stewart Creek in Queensland the conditions were so bad that they had led to a riot which had been quelled by the indiscriminate use of tear-gas. Aboriginal prisoners had also been locked in cages in open areas for periods of three months or more on "special punishment". One prisoner in Western Australia, Michael Walker, had died of heart failure at the age of 24 after being brutally treated by prison wardens, none of whom had been punished.

111. Aboriginal and islander people were greatly over-represented in custody. The Royal Commission had found that those who had died had not lost their lives as a result of isolated acts of violence or brutality but had lived their lives as victims of entrenched and institutionalized racism and discrimination. However, according to evidence obtained by his organization, a large number of aboriginal people had been killed individually by police and corrective services officers. Moreover, the funding for the Office of the Ombudsman had recently been reduced, with the result that prisoners' facilities to complain about bad treatment had been significantly cut back.

112. The Sub-Commission had already heard of the death of David Gundy. It was his organization's experience that when an aboriginal person was arrested in Australia, he or she would form part of a group that now accounted for one third of all cases in Australian criminal courts. Aboriginal people were consistently sentenced to imprisonment as a first option for offences for which white persons were consistently fined. When a young aboriginal was arrested, it could never be certain that he would be seen again.

113. The aboriginal community had absolutely no faith in obtaining justice in Australia. It therefore called upon the Commonwealth and State Governments of Australia to deliver up all their files on the causes of deaths in prison, for submission, together with the files in the hands of the aboriginal community, to the Special Rapporteur on summary and arbitrary executions.